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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE 5055 COLLWOOD LOAN**

**Date of Hearing: August 30, 2011
Time of Hearing: 10:30 a.m.
Estimated Time for hearing: 10 min.**

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for a loan to a borrower identified as 5055 Collwood, LLC. A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The Offer Sheet provides that the loan amount will be \$1.5 million and the interest rate is 16 percent. The Offer Sheet says that the Borrower will use the funds to complete a condominium conversion project. It expressly states the investment is in a “**SECOND TRUST DEED INVESTMENT**” (emphasis in the original). The Offer Sheet indicates that the combined loan-to-value was “approximately 80%.”

5. On February 24, 2006, 5055 Collwood, LLC made and delivered to various lenders, including the Direct Lenders identified on **Exhibit A**, a Promissory Note in an amount of \$1,500,000 (the “Note”). The Note was secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“Deed of Trust”) on real property and improvements thereon, as described in the Deed of Trust. The Deed of Trust was originally recorded on March 3, 2006 at Instrument Number 2006-0149662 in the Official Records of the San Diego County Recorder’s Office. USACM executed a subordination agreement, which acknowledged that a first position lender had loaned 5055 Collwood, LLC \$12,100,000. The Note was also supported by Unconditional Guaranties signed by Matthew Maisel and Rob Presley.

6. The USACM “Loan Summary” dated February 28, 2007 and filed in this case shows that Borrower was “Performing” on the Note as of February 28, 2007. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders and the confirmed Plan.

7. Counsel for the Trustee has inquired into the public records of San Diego County, California regarding the Property. Based upon the public records, it appears that all of the units have been converted into condominiums and sold. The Borrower

1 apparently continued to sell individual units into September of 2008. The Trustee does
2 not know whether the Direct Lenders listed on **Exhibit A** received any of the proceeds
3 from the sales of the individual units. The Trustee does not know who, if anyone, is
4 currently servicing this loan.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Dated: July 18, 2011

7
8 /s/ Geoffrey L. Berman

Geoffrey L. Berman

9 Copy of the foregoing (without exhibits)
10 Mailed by First Class postage prepaid
U.S. Mail on July 18, 2011 to the
Investors listed on Exhibit A.

11 s/ Matt Burns

12 Matt Burns
13 Lewis and Roca LLP
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